



STATE OF NEW YORK DEPARTMENT OF HEALTH

161 Delaware Avenue Delmar, New York 12054

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

DAL: HCBC 06-12

August 29, 2006

Dear Administrator/Operator:

The purpose of this letter is to remind operators of Adult Homes, Enriched Housing Programs, and Residences for Adults of their role with regards to the Medicare Part D Prescription Drug Program, and to specifically address the issue of the collection of pharmacy co-payments from residents in relation to this program.

As per the Department's December 2005 letter (HCBC 05-10), operators are encouraged to take steps to make sure their residents' drug needs are being met by the prescription drug plan (PDP) the resident is enrolled in. An operator should assist the resident in selecting another PDP during the open enrollment period if those needs are not being met. The Medicare Prescription Drug Program has an open enrollment from November 15 - December 31 every year, during which time an individual may change plans. Dual-eligible individuals with both Medicare and Medicaid may change plans monthly.

Remember, the resident or their legally authorized representative is the only individual who can execute a valid enrollment request. For purposes of enrollment into a PDP, there is no change in the definition of a legally authorized representative – an adult care facility (ACF) administrator or operator is **not**, by virtue of their position, authorized to act on behalf of the resident in executing enrollment decisions. Likewise, the operator is not authorized to act on behalf of the pharmacy with regard to the collection co-payments under Medicare Part D.

As you know, under Medicaid law, pharmacies must give Medicaid recipients their prescription drugs, even if the recipient states that they cannot pay the Medicaid co-payment. Medicare Part D does **not** operate under this same law. Pharmacies may refuse to provide prescription drugs to Medicare recipients who do not pay the co-payment. Medicaid cannot be billed for the prescription drug in such situations, nor is there any authority for Medicaid to pay such co-payment on behalf of the recipient.

It has come to the attention of the Department that facilities may be directly deducting co-payments from SSI residents' PNA on behalf of the participating pharmacy. The Department wishes to remind operators of Social Services Law (SSL) Section 131-o(2), which provides that a resident cannot be required to use his/her PNA for any services or supplies without the specific consent of the resident. This includes co-payments under the Medicare Part D Prescription Drug Program.

All PDPs require the recipient to pay some level of co-payment for each prescription. Residents in receipt of SSI are automatically eligible for Medicaid. Therefore, any SSI resident in receipt of Medicare/Medicaid and participating in the Medicare Prescription Drug Program are "dual eligibles". In most cases, such persons are responsible for a co-payment of \$1 for generic drugs and \$3 for brand name drugs.

As for non-dual eligible individuals participating in the Medicare Prescription Drug Program, a few PDPs may have just one co-pay amount for any prescription. But many PDPs have different levels of co-payments (known as "tiered" co-pays) for different medicines. If the PDP your resident uses has tiers, (s)he should find out which of his/her medicines are in each tier and what the co-pay amount is for each tier. If the amount your resident pays is more than (s)he can afford because the medication is in the highest tier, you may want to ask his/her doctor if there are other medications on a lower tier that are appropriate for the resident. Also, the resident may be able to seek an exception for a lower co-pay amount if the only medication that works for him/her is in the higher tier. You should assist the resident in working with the resident's doctor to request a "co-pay exception" from the PDP.

The Medicare Prescription Drug Program provides subsidies of prescription drug coverage for certain Medicare beneficiaries with low income and resources, referred to as the Low Income Subsidy (LIS). The subsidy provides assistance with premiums, deductibles and co-payments of the program. Certain groups of Medicare beneficiaries, such as dual eligibles, automatically qualify for the LIS and do not have to apply to get this extra help. Medicare beneficiaries in receipt of SSI are deemed eligible for the full LIS.

Finally, pharmacies may also waive co-payments as long as they do not advertise this help and they base the decision to waive the co-pay upon the individual's ability to pay. Again, pharmacies are not allowed to do this routinely for all customers but they may do so on a case-by-case basis. Therefore, one way to lower co-pay costs for your Medicare resident and improve access for those with low incomes is to identify pharmacies that are willing to waive the co-pay.

In July, the Department mailed letters to dual eligible recipients with information regarding Medicaid payment for drugs not covered by their Medicare PDP. **Because of impending changes that will reduce the number of drugs that will be covered under Medicaid's wrap around program, we strongly encourage residents to begin working with their prescribers now to either obtain exception requests for prescriptions currently not covered by their Part D plan or to switch to an appropriate drug that is on the plan's formulary.** As of January 1, 2007, the Medicaid wrap around program will cover a very limited number of drugs not covered by the PDP.

Medicaid continues to provide a broad wrap around program until December 31, 2006 covering medications included in the Medicare Part D benefit but which the recipient is unable to receive from their PDP for the following reasons:

- the medication is not covered by the specific plan,
- the recipient does not meet the plan's utilization management requirements, or
- quantity limits are inconsistent with the prescribed amount.

All Medicaid rules apply to wrap around benefit claims, including any Medicaid prior authorization requirements and copayment guidelines. If the drug requires prior authorization under Medicaid, the prescriber must complete the Medicaid prior authorization process by calling 1-877-309-9493.

Sincerely,

A handwritten signature in cursive script that reads "Robert P. Dougherty". The signature is written in black ink and is positioned below the word "Sincerely,".

Robert P. Dougherty

Director

Division of Home and Community Based Care